Modern Trends in International Private Law Codification: Blanket Codification

Nilufar Khodji-Akbarovna Rakhmonkulova
Professor of Civil Law and International Private Law Department at the
University of World Economy and Diplomacy Doctor of Science (DSc)
e-mail: nrakhmonkulova@inbox.ru

ANNOTATION: The article analyzes the types of unification of international private law and the importance and role of unification in the formation and codification of the legislation of countries on international private law. In addition, the positive significance of the blanket type of codification of international private law, which is a modern trend observed today, in the regulation of these relations has been studied. Today, when the issue of implementing a complex autonomous codification of international private law is on the agenda, the need to use blanket codification is justified.

Keywords: International private law, unification of international private law, codification of international private law, blanket codification, reference, incorporation.

International unification should be understood as the process of interstate cooperation in which two or more conflicting national legal norms applicable to one cross-border private legal relationship are replaced by one single norm. If the purpose of the codification of international private law is to determine the systematic legal regulation of transnational private legal relations by the state, the purpose of international unification is to develop unified norms and ensure their application in accordance with international agreements. [1] This goal is achieved by implementing unified norms into the national legal system in one of two ways - by reference or incorporation.

Referral refers to the inclusion of norms that refer to the rules of international law and give legal force to the national law on the territory of the state. Reference can be general, partial, or special, referring to international law as a whole, a part of it, or a specific norm. Incorporation is the adoption of provisions in accordance with the international agreement in the national legislation (textual repetition of international legal norms, clarification, and adaptation to national characteristics). These methods of national legal implementation were developed by the Russian scholar R. A. Muellerson, who believes that neither reference nor incorporation makes the international legal norm a part of the law of the national state. [2]

There are theories of "transformation", "reception", and "sanctioning" of the direct application of international contractual-legal norms, which imply a different approach to the unification norm than the above two methods. "Transformation" means the legal mechanism of giving the norms of international agreements the force of national legislation: 1) establishing a general norm (fundamental

www.conferenceseries.info
INTERNATIONAL Research Identity, Value and Ethics
Conference on

transformation) and 2) reflecting them in the law in the form of verbatim or provisions adapted to national law, or legally expressing consent to their application by means of another method. [3]

According to the theory of reception, the international legal norm received into the national legal system retains its dualistic content: on the one hand, it retains the previous characteristics of international legal norms, and on the other hand, as a national norm, it is characterized by its "autonomy" from voluntary changes by the state power. [4] L.P. Anufrieva is a supporter of sanctioning, in her opinion, any norm of international private law that is in force within the jurisdiction of a particular state, regardless of its national or international legal nature, "should be transferred from the will of the state, that is, be determined by it, sanctioned or adapted". [5]

In our opinion, as a result of the national legal implementation, international legal norms receive state sanction for their application and in one way or another become norms of domestic state law. [6] Norms of international private law, in addition to having the nature of a national norm, can also have an international legal nature (Article 7 of the FC of the Republic of Uzbekistan), however, the application of international law norms that regulate relations within the scope of private international law within the state will be possible only after their implementation into the national legal order. [7] The processes of international unification and national codification of private international law are always interrelated and require each other. For example, the principle of an international civil procedure called "international lis pendes" (principle of a controlled quantity of proceedings) was initially formed by French judicial practice, [8] later adopted by Swiss and Italian laws, and only then unified in Article 27 of the "Brussels I" Regulation. Currently, the suspension of consideration of the case in court until a decision is issued by the foreign court, which first began to consider a similar claim, is provided for in the legislation of Belgium, Bulgaria, and Macedonia. [9]

Harmonization of legal regulations in these countries was made possible by the influence of foreign and European private international law.

Active use of various implementation methods of unified legal norms is typical for contemporary codifications of international private law. Incorporation often introduces unified legal concepts into the domestic legislation of states. For example, modern laws adapt unified conflict of laws criteria such as "ordinary residence" and "citizenship" to national law. For example, the definition of normal residence in Article 4(2) of the Belgian Code and Article 12a of the Macedonian Law is based on the European Union Resolution 72(1) of 18 January 1972 on the standardization of the legal concepts of Domicile and Residence. [9]

The link is becoming increasingly popular and relevant as a method of unification of international private law. It allows a unified international norm to maintain significant independence from the socio-economic characteristics and legal system of a particular state.

Almost all codified laws contain references to international law related to the regulation of cross-border private legal relations (for example, Article 1(2) of the Law of Azerbaijan (partial reference)). In some cases, special reference is made to specific provisions of international instruments (for example, in the Netherlands Civil Code, Book 10, Article 152(2), (3) – Hague Convention on the Law of Succession to the Property of the Deceased (1989) 5 and to Articles 11).

A special reference to individual international and, at the same time, territorial instruments is of special interest, and the influence of the norms unified with it affects a particular issue or the entire

www.conferenceseries.info
INTERNATIONAL Research Identity, Value and Ethics Conference on

institution of national private international law. In a number of countries, for example, in Estonia, Belgium, Poland and the Netherlands, [9] the institution of the form of will is regulated by reference to the Hague Convention on the Law of Testamentary Decree (1961). Polish law contains references to the Rome I and Rome II Regulations, which define the law applicable to contractual and non-contractual obligations. [9]

This situation is widespread in the Netherlands, where, for example, in regulating the issue of the name of an individual, Dutch law refers to the Munich Convention on the Law of Personal Surnames and Names (1980 (18)). [9] In parallel, conflicting legal norms simplifying and supplementing the unifying provisions of the convention have been established for this institution (Articles 19-27).

At the previous stage of private international law codification, this method of codification, i.e. blanket codification, was rarely used and was mainly used in the Swiss Law on Private International Law (1987) and the Law "Reformation of the Italian System of Private International Law" (1995). The Dutch codification uses the reference so actively that it even left one of the articles in reserve for future reference to the new international document. Article 115 of Book 10 of the Civil Code is planned as a future norm referring to the Hague Convention on the International Protection of Minors (2000). [12]

In this way, the tendency to refer to the blanket codification of international private law, which appeared at the end of the 20th century and was clearly visible at the beginning of the 21st century, is evident. Blanket codification involves subordinating the regulation of all institutions of private international law to a unified international document (by means of direct reference to international norms in the national codification document). [11] Such national reference norms can supplement or change the unified norms in a number of cases in order to adapt them to the socio-economic interests and specific features of the law and order of a particular country. One of the unique methods of blanket codification is the preservation of an article (section) of the law reserved for a future norm, this norm consists of a reference to this treaty after the ratification of a certain international treaty (Netherlands).

In doctrine, it is usually inappropriate to use a blanket method of stating the rules in the process of codification. It is allowed to be used only when the logical integrity of the law is violated (for example, when non-compliance with the rule is considered a crime, and the sanction of the legal norm itself reflects a measure of criminal liability that can only be expressed in the criminal code). [13] Nevertheless, some scholars allow the use of reference to legal documents (for example, an international treaty) that have a higher legal force than this law, if it is required to determine the "source of law". [14]

In the fourth stage of national codifications, the significant experience of law-making practice within the framework of private international law has been collected and consolidated, so it is appropriate to recognize compact and blanket codification as the most effective method. Currently, these methods are the most widely accepted methods, because they represent the most convenient national form of assimilation of the effective results of international legal regulation within the framework of private international law. [10]

INTERNATIONAL Conference on Research Identity, Value and Ethics

One of the distinctive features of the modern process of international private law codification is the application of international private law unification. At the stage of national legal implementation, the legislature organizes its internal scattered legal norms and at the same time adapts international unified norms to the national legal order in order to achieve greater uniformity in the legal regulation of cross-border private legal relations.

REFERENCES

1. Коровина О.П. Методы унификации норм в МЧП: Автореф. дисс. … канд. юрид. наук. – М., 1998.
2. Международное частное право: Учебник /Отв. ред. Г. К. Дмитриева. 3-е изд., перераб. и доп. – М., 2012.
3. Мюллерсон Р.А. Соотношение национального и международного права. – М., 1982.
4. N. Rakhmonkulova. The principle of the closest connection as the basis of international private law. http://inscience.uz/index.php/socinov/index; A. Fiorini The Codification of Private International Law: The Belgian Experience //The International and Comparative Law Quarterly. – Apr. 2005. – Vol. 54.; Sh.
5. Ruzinazarov, N.Rakhmonkulova, L.Achilova. Problems of fundamental scientific and methodological support of digital civil turnover. Journal of Human University (Natural Science). Vol. 48. No 8. August 2021;
6. Рахмонкулова, Н. (2020). Принцип наиболее тесной связи как основа международного частного права. *Общество и инновации*, *1*(1), 89-96.; RAKHMONKULOVA, N. (2020). Жамият ва инновациялар–Общество и инновации–Society and innovations.
7. Вельяминов Г.М. Международные договоры в «международном частном праве» и его понятие //Государство и право. – Москва, 2002. – № 8.
8. Ануфриева Л.П. Соотношение международного публичного и международного частного права (сравнительное исследование правовых категорий): Дисс. … д-ра юрид. наук. – М., 2004.
9. The electronic address where the text of the regulations adopted by the European Union is placed: http://eulaw.ru.
10. http://pravo hse.ru
11. Khodjiakbarovna, S. K. (2023). Legal Nature of Family Relations. *New Scientific Trends and Challenges*, 62-66.;
12. Saydivalieva, H. H. (2020). Contractual and legal regulation of auditing 12.00. 03-Civil law. *Business law. Family law. Private international law. abstract of the dissertation for the degree of Doctor of Philosophy in Law.*; Khalikov, S., Liu, W., Turaeva, M., & Achilova, L.
13. (2021). Uzbekistan's development under the leadership of various political reforms: The case of air transport industry. *The Open Transportation Journal*, *15*(1).;
14. САЙДИВАЛИЕВА, Х. (2022). ОИЛАВИЙ-ҲУҚУҚИЙ ШАРТНОМА ОИЛАВИЙ МУНОСАБАТЛАРНИ ТАРТИБГА СОЛИШ ВОСИТАСИ СИФАТИДА. *ЮРИСТ АХБОРОТНОМАСИ*, *2*(6), 36-41.;

www.conferenceseries.info
INTERNATIONAL Research Identity, Value and Ethics Conference on

15. Ilhomovna, A. L. (2023). Genesis of Sources of Legal Regulation of Relations in the Provision of Tourist Service. *New Scientific Trends and Challenges*, 49-53.;
16. Ачилова Л. ВЛИЯНИЕ COVID-19 НА ГОСТИНИЧНЫЕ УСЛУГИ: НАЦИОНАЛЬНЫЙ И ЗАРУБЕЖНЫЙ ОПЫТ. Review of law sciences (2020) 96101 [Электронный ресурс] https://cyberleninka.ru/article/n/vliyanie-covid- 19-na-gostinichnye-uslugi-natsionalnyy-i-zarubezhnyy-opyt; Ruzinazarov, S. N., & Achilova, L. I.
17. (2021). A new stage in the development of the civil code of the Republic of Uzbekistan in the context of digital reality. *International Relations: Politics, Economics, Law*, *2020*(1), 58-65.;
18. Рузиназаров, Шухрат, and Лилия Ачилова. "Свободные научно-технические зоны." Общество и инновации 1.1/s (2020): 287-291. [Электронный ресурс] https://www.inscience.uz/index.php/socinov/article/view/49;
19. Рузиназаров Ш. Н., Ачилова Л. И. ЭЛЕКТРОННЫЕ СДЕЛКИ И ПРОБЛЕМЫ ИХ ПРИМЕНЕНИЯ В УСЛОВИЯХ ЦИФРОВОГО ГРАЖДАНСКОГО ОБОРОТА //РАЗВИТИЕ ОБЩЕСТВА И НАУКИ В УСЛОВИЯХ ЦИФРОВОЙ
20. Convention 01.01.2009. entered into force, but has not yet been ratified by the Netherlands. Electronic address where the text of The Hague Conventions is placed: http://www.hcch.net.
21. Чухвичев Д.В. Особенности законодательной техники при проведении кодификации //Право и политика. – Москва, 2005. – № 10.
22. Тихомиров Ю.А. О правилах законодательной техники //Журнал российского права. – Москва, 1999.; Isakulov, S. (2010).
23. The state control of migration in Uzbekistan and the some aspects of its further improvement. *Perspectives of Innovations, Economics and Business, PIEB*, *6*(3), 112-115.;
24. Исакулов, Ш. (2018). Потенциальные трудовые мигранты Узбекистана: трансформация миграционных предпочтений. *Монография. – Т.: Иктисодиёт дунёси*.;
25. Исакулов, Ш. Н. (2017). Вопросы дальнейшего совершенствования регулирования миграции населения в Республике Узбекистан. *Экономика и финансы (Узбекистан)*, (11), 55-61.;
26. Исакулов, Ш. Н. (2012). Отношение населения Узбекистана к трудовой миграции. *Труд и социальные отношения*, (10), 132-139.;
27. Исакулов, Ш. Н. (2009). Социальная защита прав трудовых мигрантов Республики Узбекистан и Российской Федерации. *Вестник Поволжского института управления*, (4), 192-196.;

www.conferenceseries.info
INTERNATIONAL Conference on Research Identity, Value and Ethics